

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

WILLIAM O. PERKINS)	
)	
Plaintiff,)	
)	
v.)	Civil No. 2017-25
)	
UNITED STATES VIRGIN ISLANDS,)	
VIRGIN ISLANDS BUREAU OF)	
INTERNAL REVENUE, VIRGIN ISLANDS)	
DEPARTMENT OF FINANCE,)	
)	
Defendants.)	
)	

ATTORNEYS:

Joseph A. DiRuzzo, III

Joseph A. DiRuzzo, III, P.A.
Ft. Lauderdale, FL

Alexander Golubitsky

Marjorie Rawls Roberts, P.C.
St. Thomas, U.S.V.I.
Law Offices of Douglas L. Capdeville
St. Croix, U.S.V.I.

For William O. Perkins,

Claude Walker, AG

Hugh Greentree, AAG

Virgin Islands Department of Justice
St. Thomas, U.S.V.I.

*For the United States Virgin Islands, the Virgin Islands
Bureau of Revenue, and the Virgin Islands Department of
Finance.*

ORDER

GÓMEZ, J.

Before the Court is the motion of the United States Virgin Islands, the Virgin Islands Bureau of Internal Revenue, and the Virgin Islands Department of Finance (collectively, the

"government") to dismiss the complaint in this matter for lack of subject matter jurisdiction. A brief outline of the relevant procedural history is necessary before the Court can address the government's motion to dismiss.

On April 18, 2017, William O. Perkins ("Perkins") filed a complaint against the government. On June 19, 2017, the government moved for an extension of time to respond to the complaint, which the Magistrate Judge granted. On July 14, 2017, the government moved to dismiss Perkins's complaint for lack of subject matter jurisdiction. On August 3, 2017, Perkins filed a motion asking the Court to convert the government's motion to dismiss into a motion for summary judgment. The same day, Perkins filed an amended complaint against the government.

In light of that procedural history, as a threshold matter, the Court must determine which complaint in this matter is operative.

Federal Rule of Civil Procedure 15 ("Rule 15") governs the amendment of complaints. Rule 15, in relevant part, states that "[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1).

Here, Perkins was served with the government's motion to dismiss on July 14, 2017. See LRCi 5.4(i)(1) ("The 'Notice of Electronic Filing' that is automatically generated by the Court's Electronic Filing System . . . constitutes service of the filed document on Filing Users."). Perkins filed an amended complaint 20 days later on August 3, 2017. Accordingly, Perkins's amended complaint was timely filed as a matter of course. See Fed. R. Civ. P. 15(a)(1). Where, as here, a defendant files a motion to dismiss and the plaintiff subsequently *properly* files an amended complaint, that subsequent pleading is operative and "render[s] moot [the] defendant['s] motion[] to dismiss." See *Merritt v. Fogel*, 349 Fed. App'x 742, 745 (3d Cir. 2009).

The premises considered, it is hereby

ORDERED that the government's motion to dismiss docketed at ECF Number 14 is **MOOT**; and it is further

ORDERED that Perkins's motion to convert docketed at ECF Number 19 is **MOOT**.

s_____
Curtis V. Gómez
District Judge